

SENATE RECORD VOTE ANALYSIS

106th Congress
1st Session

Vote No. 338

October 21, 1999, 5:37 p.m.
Page S-12989 Temp. Record

PARTIAL-BIRTH ABORTION BAN/Sale of Fetal Tissue

SUBJECT: Partial-Birth Abortion Ban Act of 1999 . . . S. 1692. Smith (of New Hampshire) amendment No. 2324.

ACTION: AMENDMENT REJECTED, 46-51

SYNOPSIS: As introduced, S. 1692, the Partial-Birth Abortion Ban Act of 1999, will enact criminal and civil penalties for any person who "partially vaginally delivers a living fetus before killing the fetus." An exception will be provided if a partial-birth abortion is necessary to save the life of the mother and no other procedure will suffice.

The Smith (of New Hampshire) amendment would enact new reporting requirements on the transfer of human fetal tissue obtained from induced abortions. (Prior to the election of President Clinton, the Federal Government was prohibited from doing research using fetal tissue from induced abortions. President Clinton lifted that restriction as soon as he was elected, though he later agreed to prohibit, by law, the sale of fetal tissue (meaning all or part of an aborted baby) from an induced abortion to all researchers, including in the Federal Government. Evidence exists that this existing ban on the sale of fetal tissue is being avoided due to a provision in the law which states that although fetal tissue may not be sold directly, funds may be provided to make "reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue." A new industry has now emerged in America under which abortion clinics are paid "site fees" by third-party vendors, including Opening Lines and Anatomical Gift Foundation. These vendors take orders from their customers for various fetal body parts. The orders typically require "fresh" body parts that must be packed on ice within 10 minutes of fetal death. They also state the required gestational age of the aborted babies and require that they be free from any disease or other defect. Opening Lines has made a brochure for its customers (which include the National Institutes of Health) in which it lists the prices for various organs, such as \$125 for a kidney or \$325 for a spinal cord. Costs are supposedly based on processing costs, though the price listed for an entire fetal corpse, which takes much less processing because only packing and shipping are involved, is \$600.) Specifically, the Smith amendment would require any entity that receives donated human fetal tissue to file a disclosure statement with the Department of Health and Human Services that contained the following information:

(See other side)

YEAS (46)			NAYS (51)			NOT VOTING (3)	
Republicans (45 or 87%)	Democrats (1 or 2%)		Republicans (7 or 13%)	Democrats (44 or 98%)		Republicans (3)	Democrats (0)
Abraham	Hatch	Breaux	Collins	Akaka	Kennedy	Chafee- ²	
Allard	Helms		Jeffords	Baucus	Kerrey	Gregg- ²	
Ashcroft	Hutchinson		Roth	Bayh	Kerry	Mack- ²	
Bennett	Hutchison		Snowe	Biden	Kohl		
Bond	Inhofe		Specter	Bingaman	Landrieu		
Brownback	Kyl		Stevens	Boxer	Lautenberg		
Bunning	Lott		Warner	Bryan	Leahy		
Burns	Lugar			Byrd	Levin		
Campbell	McCain			Cleland	Lieberman		
Cochran	McConnell			Conrad	Lincoln		
Coverdell	Murkowski			Daschle	Mikulski		
Craig	Nickles			Dodd	Moynihan		
Crapo	Roberts			Dorgan	Murray		
DeWine	Santorum			Durbin	Reed		
Domenici	Sessions			Edwards	Reid		
Enzi	Shelby			Feingold	Robb		
Fitzgerald	Smith, Bob (I)			Feinstein	Rockefeller		
Frist	Smith, Gordon			Graham	Sarbanes		
Gorton	Thomas			Harkin	Schumer		
Gramm	Thompson			Hollings	Torricelli		
Grams	Thurmond			Inouye	Wellstone		
Grassley	Voinovich			Johnson	Wyden		
Hagel							

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

- a list of each entity that had obtained possession of the human fetal tissue prior to its possession by the filing entity, including any entity used solely to transport the fetal tissue and the tracking number used to identify the packaging of such tissue;
- a description of the use that would be made of the fetal tissue involved by the filing entity and the end user (if known);
- a description of the medical procedures that was used to terminate the fetus from which the fetal tissue was obtained, and the gestational age of the fetus at the time of death;
- a description of the type and quantity of fetal tissue involved;
- a description of the amount of money, or any other object of value, that is transferred as a result of the transference of the fetal tissue involved, including any fees received to transport such fetal tissue to the end user;
- a description, including the amount, of any site fee paid to facility at which the induced abortion(s) was performed; and
- any other information that the Department of Health and Human Services might require.

Additionally, any entity that entered into a contract to ship human fetal tissue:

- would have to notify the shipper that the package contained human fetal tissue;
- would have to prominently label the outer package to indicate that it contained human fetal tissue;
- would have to ensure that the shipment was done in an acceptable manner for shipping biomedical material; and
- would have to ensure that a tracking number was provided for the package.

Nothing in the amendment would permit the disclosure of the identity of any individual involved in the performance of an abortion, of any woman who obtained an abortion, or of any information that could reasonably be used to determine such identity. Violation of the above requirements would be punishable by fines of up to \$5,000 per violation. Finally, a facility at which induced abortions were performed would not be permitted to require the payment of any site fee to any entity collecting fetal body parts unless the amount of such a fee was reasonable in terms of reimbursement for the actual real estate or facilities used by such entity.

Those favoring the amendment contended:

This amendment would shine a spotlight on a new, evil practice that has emerged in the abortion industry, which is the sale of body parts of aborted babies to researchers. That practice is illegal and immoral, but abortionists (and our lovely moral scientists involved in medical research in America) are getting away with it, because clever lawyers, as is their wont, have found a loophole in the law. That loophole is being used to make all sorts of "payments" related to "donated" fetal tissue. It is a very profitable loophole for abortionists, who have seen their income fall as the abortion rate in America has declined (in fact, if it were not for the generous support of the American taxpayers, we believe a large percentage of them would have already gone out of business). This practice is closely connected to the practice of partial-birth abortions because researchers often demand "fresh," non-contaminated parts from aborted babies who have been dead for fewer than 10 minutes. A partial-birth abortion appears to be about the best way for an abortionist to get saleable parts; in many cases, they can even deliver aborted babies who are still alive to the organ harvesters. The Smith amendment would attempt to stop these sales by exposing them. It would enact reporting requirements that would expose all of the steps involved in getting the fetal tissue to the researcher, including any steps that involved the exchange of money.

Before President Clinton was elected there was a ban on Federal research using fetal tissue from induced abortions. That ban existed out of deference to the strongly held beliefs of tens of millions of Americans that it was, morally, horrifically wrong to experiment on the bodies of innocent babies who had lost their lives in elective abortions. The moral basis for the ban was very similar to the moral basis for the ban that the United States imposed on the use of the medical information it obtained after World War II that came from Nazi experiments on concentration camp victims. President Clinton immediately lifted that fetal research ban on becoming President, though he later agreed by law that at least it would be illegal to sell fetal body parts. That law, though, had a provision that lawyers soon found they could use as a loophole. Since President Clinton has been in office, a new industry has grown up that sells aborted baby body parts to researchers, including at the National Institutes of Health.

This new industry preys upon pregnant women. A distraught young woman in the middle or later stages of pregnancy will walk into a Planned Parenthood clinic looking for help. She may be having problems with a parent or boyfriend; she may be having financial problems; she may be interested in adoption, help with housing, or help finding medical care to raise her baby. In that clinic there will be someone who works for the body parts wholesaler. He will be holding a stack of orders from researchers saying the body parts they want. He will look at that woman's chart to see if her baby could be used to fill any of his orders. Perhaps her baby will fit the bill for an order for a baby between 20 and 26 weeks gestation with no fetal abnormalities and no venereal disease from the mother. He will tell the abortionist that he would like to get that baby, uncontaminated, within 10 minutes of death. What help will this young woman get? She may not want abortion; she may have just come into the clinic in a moment of weakness. Every effort to get her to stay and have an abortion will now be made.

The abortionist will now have a pecuniary interest in performing a partial-birth abortion. If he does a "Dilation and Evacuation," which involves dismembering a living baby piece by piece in the womb, most of the parts will probably be too contaminated to sell. If a digoxin poison or salt abortion is used, the babies' organs will be damaged and will again be much less useful to researchers.

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In fact, we have hundreds of the order forms that have been placed by researchers, and those forms frequently note that they will not take body parts from chemical abortions. On the other hand, those forms frequently state that the tissue must be fresh, and on ice, within 10 minutes of fetal death. A doctor from Texas, Dr. Bandy, recently wrote to tell us how he had been called in by Life Dynamics to review from a medical perspective several requisitions for fetal tissue and body parts. He wrote how shocked he was to see leading institutions in our country placing orders from mail-order catalogs, with price lists, for arms, legs, brains, and other body parts from abortion clinics and that he was particularly struck by how the orders always emphasized that they needed "fresh" tissue within 10 minutes of fetal death. He noted that 10 minutes is not a lot of time to kill a baby in the mother's womb and extract, dissect, and process the baby's body. To meet that time limit, the baby would have to be killed as close as possible to being removed from the womb, and "would lead to in many cases babies . . . being born living, in order to be able to have them on ice, or otherwise processed within this short period of time." The partial-birth abortion procedure, which is dangerous to the woman in so many respects and is obviously cruelly fatal to the baby, is tailor-made to fill the needs of our moral scientists for "fresh" body parts. Just hold the living baby with only his or her head still in the mother, kill the baby, and then hand the corpse to the tissue harvester within seconds of death.

Some abortionists are willing to go even farther. As Dr. Hern, who is the author of the most widely used textbook on abortion procedures, noted, "A number of practitioners attempt to ensure live fetuses after later abortions so that genetic tests can be conducted on them." So far the Supreme Court has not discovered anything emanating in the Constitution's penumbra that says that a living baby totally separated from its mother is just a "living fetus" that is "potential life." No, such babies are still classified as babies with constitutional protection, and every State prohibits their murder. As Dr. Hern's comment makes clear, that legal nicety is not stopping abortionists. In one case we know of, a woman who worked for one of the tissue harvesters was handed a pan holding two perfectly healthy twins, moving and gasping for air. The abortionist told her, "Got you some good specimens, twins." The wholesaler told him that she could not dissect the twins alive, so the abortionist then took a bottle of sterile water and filled the pan until the water ran up over the babies' mouths and noses. The wholesaler then left the room, because, as she said: "I couldn't watch those fetuses moving. That's when I decided it was wrong."

Abortion clinics have been losing business lately. The number of yearly abortions performed has declined, and fewer doctors are willing to perform them. Further, we have quotes from many abortionists in which they complain that abortion is a horrible business and that other doctors look down on them as seedy practitioners who only perform abortions because they are not competent enough to establish reputable medical practices. Abortionists get a great deal of help from the Federal Government, ostensibly to pay for contraceptives; Planned Parenthood, the largest abortion provider in the world, alone gets \$158 million from the Federal Government per year. Still, they have received that funding for years; to continue raking in the money they needed a new source of funds. The sale of body parts apparently has become that source. The consulting service Frost & Sullivan has examined the new market and has found that worldwide sales in 1996 were just under \$428 million and that they will reach \$1 billion by 2002. Pro-life Americans, through their tax dollars, are being forced to pay for this growth industry from both sides--they are forced to give grants to Planned Parenthood, and then the National Institutes of Health and other Federal researchers then use taxpayer funds to pay for the body parts of aborted babies from Planned Parenthood clinics.

The legal dodge that is used is that the law against selling fetal body parts allows "reasonable" payments to pay for the costs of processing donated fetal tissue. The researchers and others involved tell us that it is just a fee-for-service, nonprofit transaction. If it is fee for services, why is it \$600 for an intact cadaver and \$325 for a spinal cord? It takes a lot more time to extract a spinal cord from a 2- or 3-pound baby than it does to put a cadaver in a box and mail it somewhere.

A few years ago a newspaper ran a story about an aborted baby who was born alive. The story was run under the heading, "The Dreaded Complication." That complication is not dreaded by many abortionists; it is welcome, because such babies can be chopped up and sold for more money. Sometimes, women undergoing the 3-day partial-birth abortion procedure go into labor before the third day and go to hospitals. The treatment they receive at those hospitals varies; we know of babies who have been stuck into dirty linen closets to die; we know of other cases where comfort care has been given until they have died naturally, and we even know of cases where the babies have been old enough to be given medical care to save their lives. Even babies abandoned to die in dirty laundry are luckier than the babies who are killed and sold piece by piece in abortion clinics.

The Smith amendment would shine a light into this filthy, inhuman industry that exploits women in desperate circumstances and then dismembers and sells their babies. It would expose who is buying, who is selling, and what is happening. We need to find out what is going on and let the American people now. We have had enough of the abortion industry--partial-birth abortions and drowning innocent babies in a pan--we have had enough of it. It is indefensible. We strongly support this amendment.

Those opposing the amendment contended:

This amendment is nearly acceptable. However, we do not think that the names of the clinics involved should be revealed, because they might then be attacked by anti-choice extremists.